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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,763	07/08/2003	Ung-Kil Jee	T10086	9902
20450	7590	06/19/2007		
ALAN J. HOWARTH P.O. BOX 1909 SANDY, UT 84091-1909			EXAMINER CLAYTOR, DEIRDRE RENEE	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 06/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/615,763	Applicant(s) JEE, UNG-KIL	
	Examiner Renee Claytor	Art Unit 1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

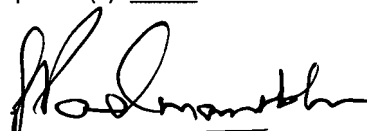
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Applicant's arguments in response to the Final Action mailed on 2/23/2007 have been acknowledged and are not found to be persuasive. Applicant's argue that Lee teaches an injectable composition that requires propofol and a poloxamer and teaches away from making a composition that lacks a poloxamer. This argument is not persuasive because Lee et al. teach compositions comprised of propofol and poloxamer, which allows for the inclusion of other components. Likewise, Applicant's claim reads on compositions comprised of 2,6-diisopropylphenol, polyethylene glycol 660 hydroxystearate, tetrahydrofurfuryl alcohol polyethyleneglycol ether and an aqueous medium; therefore, the "comprising" language allows for other components, such as polaxmers, to be present. Applicant's further argue that Chen teaches making an oral composition containing as essential ingredients an ionizable hydrophobic therapeutic agent, an ionizing agent and a surfactant. This argument is not found persuasive because though the Chen et al. reference is particularly directed to its value in oral dosage forms, it is stated that the invention is not so limited (Col. 4, lines 62-64) and can be formulated for parenteral administration (Col. 35, lines 9-13). In addition, Chen et al. teaches compositions comprised of ionizable hydrophobic therapeutic agents, an ionizing agent and a surfactant, also allowing for the inclusion of other components. Likewise, as explained before, Applicant's claim also reads on composition "comprised" of certain elements, which allows for the inclusion of other elements such as ionizing agents. Applicant's carry the same arguments to the second 35 U.S.C. 103 rejection which is further in view of De Tommaso, in which Applicant's do not feel the combination of the three references give the present invention. This is not persuasive because the De Tommaso reference fills in the deficiency in the other references of a propofol solution with a bile salt and also provides a transparent and clear solution. Therefore the combination of the references teach an injectable propofol solution with all the claimed elements.